



**Court File No./N° du dossier du greffe:** CV-19-00001607-0000

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 08-Apr-2019  
Délivré par voie électronique  
Milton

**D L I V E R Y.**

PATRICK CHATELAIN

## Plaintiff

- and -

IAN GREEN, JOHN DOE, ENTERPRISE RENT-A-CAR CANADA COMPANY  
and AVIVA INSURANCE COMPANY OF CANADA

## Defendants

## **STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer, or where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this Court Office, **WITHIN TWENTY DAYS** after this Statement of Claim is served upon you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date \_\_\_\_\_

Issued by \_\_\_\_\_  
Local Registrar

Address of Court Office:  
491 Steeles Avenue East  
Milton, Ontario  
L9T 1Y7

**TO:** IAN GREEN

[REDACTED]

**AND TO:** JOHN DOE

**AND TO:** ENTERPRISE RENT-A-CAR CANADA COMPANY  
1969 Upper Water Street  
Purdy's Wharf Tower II  
Halifax, Nova Scotia  
B3J 3R7



**AND TO:** AVIVA GENERAL INSURANCE COMPANY  
10 Aviva Way Suite 100  
Markham, Ontario  
L6G 1B3

**CLAIM**

1. The Plaintiff claims against the Defendants for the following:
  - (a) Special damages in the sum of \$1,000,000.00;
  - (b) General damages in the sum of \$2,000,000.00;
  - (c) Aggravated damages in the sum of \$500,000.00;
  - (d) Punitive and exemplary damages in the sum of \$500,000.00;
  - (e) Pre-judgment interest pursuant to Section 128 of the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
  - (f) Post-judgment interest pursuant to Section 129 of the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
  - (g) His costs of this action and applicable taxes on costs; and
  - (h) Such further and other relief as this Honourable Court deems just.

**THE PARTIES**

2. The Plaintiff resides in the Community of Georgetown, in the Province of Ontario, and at all material times, was working as an Ontario Provincial Police Constable when he was struck and dragged by, and thrown from, a black 2016 Chrysler motor vehicle bearing Quebec Licence Plate No. FLK 8756 (the "Enterprise vehicle"). The Enterprise vehicle was rented to the Defendant, Ian Green, and owned by the Defendant, Enterprise Rent-A-Car Canada Company.

3. The Defendant, Ian Green, resides in the City of Brampton, in the Province of Ontario, and at all material times, was the operator of the Enterprise vehicle and had rented the vehicle from the Defendant, Enterprise Rent-A-Car Canada Company. In the alternative, this Defendant allowed the Defendant, John Doe, to operate the Enterprise vehicle.

4. In the alternative, the Defendant, John Doe, is an unidentified individual and at all material times, was the operator of the Enterprise vehicle. At the point of the issuance of this Statement of Claim, subject to paragraph 3 above, the Plaintiff has no knowledge as to the correct identity of the said Defendant.

5. The Defendant, Enterprise Rent-A-Car Canada Company, is a corporation incorporated pursuant to the laws of the Province of Nova Scotia, with its head office located in the City of Halifax, in the Province of Nova Scotia, and at all material times was the owner of the Enterprise vehicle and had rented it to the Defendant, Ian Green.

6. The Defendant, Aviva General Insurance Company, is an insurance company carrying on business throughout Ontario and elsewhere with its head office located in the City of Markham, in the Province of Ontario, and at all material

times, pursuant to a policy of insurance bearing policy number 41242524 with an O.P.C.F. 44 endorsement, provided unidentified, uninsured and underinsured insurance coverage to the Plaintiff.

## **THE INCIDENT**

7. On September 4, 2017, at approximately 8:40 a.m., in the City of Mississauga, in the Province of Ontario, in the northbound lanes of Hurontario Street nearby the exit ramp for westbound Highway 403, the Enterprise vehicle was stopped and pulled over for a traffic stop by the Plaintiff. During the traffic stop, suddenly and without warning, the Enterprise vehicle accelerated and struck and dragged the Plaintiff. With the Plaintiff still on Enterprise vehicle, it sharply swerved and changed lanes, throwing the Plaintiff approximately 100 meters onto the roadway. The Enterprise vehicle fled the scene. As a result of this incident, the Plaintiff suffered serious personal injuries, including a traumatic brain injury with a loss of consciousness, cognitive issues, and post-concussion disorder.

## **ALLEGATIONS OF NEGLIGENCE**

8. The Plaintiff states that the incident was caused by the negligence of the Defendants, the particulars of which are as follows:

**A. AS TO THE NEGLIGENCE OF THE DEFENDANT, IAN GREEN:**

- (a) He failed to remain stopped during a traffic stop and fled the scene;
- (b) He struck and dragged the Plaintiff while fleeing the scene;
- (c) He drove in an extremely dangerous manner after striking and dragging the Plaintiff, with full knowledge of him being on the front driver's side of the vehicle;
- (d) He aggressively and dangerously sped up the Enterprise vehicle and swerved in traffic without due care for the Plaintiff or the public;
- (e) He failed to stop the Enterprise vehicle when it was apparent the Plaintiff was hanging onto the Enterprise vehicle while it was in motion;
- (f) He drove recklessly and without due caution;
- (g) He failed to keep a proper lookout;
- (h) He failed to have or maintain the Enterprise vehicle under proper control;
- (i) He was travelling at too high a rate of speed in the circumstances;
- (j) On the occasion in question, he was an incompetent driver, lacking in reasonable skill and self-command, and ought not to have attempted to operate a motor vehicle;
- (k) Even after the danger of an incident arose, he could, by the exercise of reasonable care, have avoided the same but he failed to do so;

- (l) At the time, his faculties of observation, perception, judgment and self-control were impaired and due to his physical and mental condition, he was incompetent to operate a motor vehicle with normal and reasonable care and attention;
- (m) He failed to have the Enterprise vehicle in a proper state of mechanical repair suitable for the safe use thereof on a highway;
- (n) He failed to have the brakes on the Enterprise vehicle in a proper working order or in the alternative, he failed to properly apply the same or at all;
- (o) He was dialling, talking or texting on a cellular telephone just before and at the time of the incident;
- (p) He was unable to hear the Plaintiff due to the excessive volume of his entertainment system just before and at the time of the incident;
- (q) He was distracted by the global positioning system located in the Enterprise vehicle just before and at the time of the incident;
- (r) In the five years before the incident, he attended on his family doctors, other physicians and optometrists for various ailments and was prescribed medication for these ailments and the ailments and the medications and the side effects to the medications impaired his ability to drive and his ability to maintain a driver's licence and notwithstanding advice from various health professionals not to drive

or to drive only under limited circumstances, he disregarded this advice and drove in any event;

- (s) He failed to observe the Rules of the Road as required by the *Highway Traffic Act*, R.S.O. 1990;
- (t) He created and allowed a situation of danger to exist from which the Plaintiff, despite all reasonable efforts and precautions, was unable to extricate himself;
- (u) In the event that he was not the operator of the Enterprise vehicle at the time of the incident, he provided consent for the Defendant, John Doe, to operate the Enterprise vehicle at all material times;
- (v) In the event that he was not the operator of the Enterprise vehicle at the time of the incident, he allowed the Enterprise vehicle to be used by the Defendant, John Doe, when he was aware of prior instances where this Defendant had operated a vehicle in an aggressive and dangerous manner to the public yet allowed him to use the said vehicle; and
- (w) In the event that he was not the operator of the Enterprise vehicle at the time of the incident, he allowed the Enterprise vehicle to be used when he knew, or ought to have known, it was unfit for use on a highway.

**B. AS TO THE NEGLIGENCE OF THE DEFENDANT, JOHN DOE, FOR WHOSE NEGLIGENCE THE DEFENDANT, IAN GREEN, IS LIABLE IN LAW:**

- (a) He failed to remain stopped during a traffic stop and fled the scene;
- (b) He struck and dragged the Plaintiff while fleeing the scene;
- (c) He drove in an extremely dangerous manner after striking and dragging the Plaintiff, with full knowledge of him being on the front driver's side of the vehicle;
- (d) He aggressively and dangerously sped up the Enterprise vehicle and swerved in traffic without due care for the Plaintiff or the public;
- (e) He failed to stop the Enterprise vehicle when it was apparent the Plaintiff was hanging onto the Enterprise vehicle while it was in motion;
- (f) He drove recklessly and without due caution;
- (g) He failed to keep a proper lookout;
- (h) He failed to have or maintain the Enterprise vehicle under proper control;
- (i) He was travelling at too high a rate of speed in the circumstances;
- (j) On the occasion in question, he was an incompetent driver, lacking in reasonable skill and self-command, and ought not to have attempted to operate a motor vehicle;
- (k) Even after the danger of an incident arose, he could, by the exercise

of reasonable care, have avoided the same but he failed to do so;

- (l) At the time, his faculties of observation, perception, judgment and self-control were impaired and due to his physical and mental condition, he was incompetent to operate a motor vehicle with normal and reasonable care and attention;
- (m) He failed to have the Enterprise vehicle in a proper state of mechanical repair suitable for the safe use thereof on a highway;
- (n) He failed to have the brakes on the Enterprise vehicle in a proper working order or in the alternative, he failed to properly apply the same or at all;
- (o) He was dialling, talking or texting on a cellular telephone just before and at the time of the incident;
- (p) He was unable to hear the Plaintiff due to the excessive volume of his entertainment system just before and at the time of the incident;
- (q) He was distracted by the global positioning system located in the Enterprise vehicle just before and at the time of the incident;
- (r) In the five years before the incident, he attended on his family doctors, other physicians and optometrists for various ailments and was prescribed medication for these ailments and the ailments and the medications and the side effects to the medications impaired his ability to drive and his ability to maintain a driver's licence and

notwithstanding advice from various health professionals not to drive or to drive only under limited circumstances, he disregarded this advice and drove in any event;

- (s) He failed to observe the Rules of the Road as required by the *Highway Traffic Act*, R.S.O. 1990; and
- (t) He created and allowed a situation of danger to exist from which the Plaintiff, despite all reasonable efforts and precautions, was unable to extricate himself.

**C. AS TO THE NEGLIGENCE OF THE DEFENDANT, ENTERPRISE RENT-A-CAR CANADA COMPANY:**

- (a) They failed to have or maintain the Enterprise vehicle in a proper state of mechanical repair suitable for the safe use thereof on a roadway;
- (b) They rented a vehicle to the Defendant, Ian Green, without properly obtaining background documentation and performing due diligence;
- (c) They failed to properly ensure that their vehicle was not being used for an illegal or improper purpose;
- (d) They failed to have the brakes, lights, horn and signal indicator on the Enterprise vehicle in proper working order;
- (e) They created and allowed a situation of danger to exist from which the Plaintiff, despite all reasonable efforts and precautions, was unable to

extricate himself.

### **O.P.C.F. 44 ENDORSEMENT**

9. As a result of the Plaintiff's inability to identify and locate the Defendant, John Doe, the Plaintiff states that there may be no known coverage to pay the Plaintiff's damages in full. The Plaintiff further states that there may be insufficient or no insurance coverage from the Defendant, Ian Green, or on the Enterprise vehicle to pay his damages in full and pursuant to the O.P.C.F. 44 endorsement contained in the insurance policy which was issued by the Defendant, Aviva Insurance Company of Canada, to the Plaintiff, he is entitled to that amount of his damages up to the limits of the coverage provided by this Defendant.

### **INJURIES AND SYMPTOMS**

10. As a result of this incident, the Plaintiff sustained permanent serious disfigurement and permanent serious impairment of an important physical, mental and psychological function including, but not limited to, the following injuries:

- A traumatic brain injury with a loss of consciousness and cognitive deficits;
- Post-concussive syndrome;

- Impaired vision;
- Post-traumatic stress disorder;
- Right elbow injury;
- Sleep disturbance; and
- Numerous lacerations, abrasions and contusions and a spraining, straining and tearing of the muscles, tendons, ligaments, discs, nerves and vessels throughout his body.

11. The injuries to the Plaintiff were accompanied by headaches, dizziness, shock, anxiety, depression, emotional trauma, insomnia, weakness and stiffness which continue to the present and will continue in the future.

### **PAIN, SUFFERING AND LOSS OF ENJOYMENT OF LIFE**

12. The Plaintiff has sustained and will continue to sustain pain and suffering, a loss of enjoyment of life and a loss of amenities. The Plaintiff is unable to participate in those recreational, social, household, athletic, educational and employment activities to the extent to which he participated in such activities prior to the incident.

**TREATMENT AND CARE**

13. As a further result of this incident, the Plaintiff has undergone and will continue to undergo in the future, hospitalization, surgery, therapy, rehabilitation, attendant care, the use of specialized equipment and other forms of medical treatment and health care. In addition, the Plaintiff has received and will continue to receive medication.

**COST OF CARE**

14. The Plaintiff has incurred and will continue to incur expenses, including expenses for hospitalization, medication, therapy, rehabilitation, medical treatment and other forms of care, the full particulars of which expenses are not within the Plaintiff's knowledge at this time.

**LOSS OF HOUSEHOLD AND HOME MAINTENANCE CAPACITY**

15. The Plaintiff is unable to perform household and home maintenance tasks for himself to the extent that he was able to do so before the incident and resultant injuries. The Plaintiff has suffered a loss of housekeeping and home maintenance capacity and will require assistance in the future to complete such tasks.

**LOSS OF INCOME**

16. The Plaintiff has sustained a loss of income and will continue to sustain a loss of income, a loss of competitive advantage in the employment field, a loss of income earning potential and a diminution of income earning capacity.

**SPECIAL DAMAGES**

17. As a result of this incident, the Plaintiff, has suffered other pecuniary damages up to the present and will continue to suffer pecuniary damages in the future, the full particulars of which are not known at this time.

**AGGRAVATED, PUNITIVE & EXEMPLARY DAMAGES**

18. The Plaintiff states that the Defendants, Ian Green and/or John Doe, have acted in a reprehensible, reckless, wanton and high-handed manner with callous disregard for the safety of the Plaintiff. The Plaintiff states that these Defendants should have been conscious of the probable consequences of his actions and the damages these would cause to the Plaintiff. The Plaintiff states that he is entitled to an award of aggravated, punitive and exemplary damages, the particulars of which are as follows:

- (a) He knowingly began operating the Enterprise vehicle with the Plaintiff holding onto the driver's side;
- (b) He drove in a very dangerous and reckless manner with complete disregard to the safety of the Plaintiff and others;
- (c) He aggressively sped up and changed lanes causing the Plaintiff to be thrown off the Enterprise vehicle and land onto live lanes of traffic;
- (d) He showed reckless disregard for the lives of those using the roadway, including the Plaintiff;
- (e) He recklessly exposed the Plaintiff to a substantial risk of harm without justification;
- (f) He voluntarily permitted himself to arrive at such a condition, resulting from the consumption of alcoholic beverages or the absorption of drugs that his normal faculties, perception, will and judgment were impaired to such an extent that when driving a motor vehicle, he was a danger to himself and to the public;
- (g) In the five years before the incident, he had attended on his family doctors, other physicians and optometrists for various ailments and was prescribed medication for these ailments and the ailments and the medications and the side effects to the medications impaired his ability to drive and his ability to maintain a driver's licence and notwithstanding advice from various health professionals not to drive

or to drive only under limited circumstances, he disregarded this advice and drove in any event; and

- (h) He was, or ought to have been aware, of the probable consequences of his conduct and the damages such conduct would cause to the Plaintiff.

### **MENTAL INJURY AND PSYCHOLOGICAL DISTRESS**

19. As a further result of the incident, the Plaintiff has sustained mental injuries and significant psychological distress which is serious and prolonged.

### **CONVICTION**

20. The Plaintiff states that the Defendant, Ian Green, was charged with and convicted of various offences under the provisions of the *Highway Traffic Act*, R.S.O. 1990, Chapter H.8, as amended and the *Criminal Code*, R.S.C. 1985, c. C-46, as amended.

### **APPLICABLE STATUTES**

21. The Plaintiff pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, Chapter N.1, as amended, the *Insurance Act*, R.S.O. 1990, Chapter

1.8, as amended, the *Highway Traffic Act*, R.S.O. 1990, Chapter H.8, as amended, the *Criminal Code*, R.S.C. 1985, c. C-46, as amended, and the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43, as amended.

## **PLACE OF TRIAL**

22. The Plaintiff proposes that this action be tried in the Town of Milton, in the Province of Ontario.

April , 2019

**SMITIUCH INJURY LAW**  
Professional Corporation  
3280 Bloor Street West  
Centre Tower, Suite 800  
Toronto, ON M8X 2X3

**Michael D. Smitiuch (LSO#:41039I)**  
**Peter Cho (LSO#:60046R)**  
Tel.: (416) 621-1551  
Fax: (416) 621-1558

Lawyers for the Plaintiff

PATRICK CHATELAIN  
Plaintiff

- and -

IAN GREEN ET AL.  
Defendants

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Milton

**STATEMENT OF CLAIM**

---

**SMITIUCH INJURY LAW**  
Professional Corporation  
3280 Bloor Street West  
Centre Tower, Suite 800  
Toronto, ON M8X 2X3

---

**Michael D. Smitiuch (LSO#: 410391)**  
**Peter Cho (LSO#: 60046R)**  
Tel: (416) 621-1551  
Fax: (416) 621-1558

Lawyers for the Plaintiff